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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

78-1715

**DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM**

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA**

**GRISBAUM & KLEPPNER
FERDINAND J. KLEPPNER
Professional Building
3224 N. Turnbull Drive
Metairie, Louisiana 70002
ATTORNEY FOR PETITIONERS**

(315)

A. May have. I can't say - -

Q. Are you sure that you asked for an attorney?

A. I'm positive I asked for an attorney, because they said, "Okay," and that's why they stopped questioning me.

Q. After you asked for an attorney, did they ask any more questions directed to getting you to make a confession at that time?

A. You mean about the murders?

Q. Yes.

A. I couldn't say for sure.

Q. What did they do then?

A. Then they took me back and they put me in a cell.

Q. Now, what did you think was going to happen while you were in that cell, what were you waiting for?

A. Well, I knew they was going to question Scotty because they told me that.

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- Q. Because what?
- A. They told me they was going to talk to Scotty, you know, and so I knew they was talking to Scotty.
- Q. How long were you in that cell?
- A. I would say around two hours, but I ain't for positive.
- Q. Now, while you were in that cell did you talk to anybody else?
- A. Just the jailer when he come by.
- Q. What did you all talk about?
- A. What he thought I would get, how much time.
- Q. What did he tell you?
- A. He told me that I would probably get three years at the most.
- Q. Did you believe him?
- A. Yes.
- Q. Okay. Now, why was he talking to you?
- A. He come back there for some reason. I think it was to clean out another cell.

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- Q. Did he tell you you ought to give a confession?
- A. No.
- Q. But he acted like you were guilty?
- A. Yes.
- Q. And you thought he knew what he was talking about?
- A. Yes.
- Q. Okay. Did you send for Sodaro?
- A. Yes. I asked if I could see him.
- Q. What did you send for him for?
- A. To talk to him, find out what Scotty said, and if I could see Scotty.
- Q. Did you want to make a confession at that time or (317) make a statement?
- A. No.
- Q. You only wanted to see Scotty?
- A. Yes, and find out what Scotty -- what was happening with Scotty.
- Q. How close are you and Scotty?

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- A. Well, I would say we're close, probably about as close as two brothers could get.
- Q. And who came to get you?
- A. I believe it was Sergeant Sodaro.
- Q. Are you sure it was him or not?
- A. Well, I talked to another jailer, you know. I asked if I could see him, you know, and he said, "He's busy right now."
- Q. How long did you have to wait?
- A. I would say I waited around ten, something like that, minutes, and then Sergeant Sodaro come back there and told me he was busy.
- Q. He came back and told you he was busy?
- A. Yes.
- Q. Did he tell you what he was busy doing?
- A. Yes. He told me he was talking to Scotty.
- Q. Okay. And how long was it after that before he took you out?

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- A. Around another thirty minutes. I couldn't say for sure.
- Q. Now, when they brought you down, what happened when they brought you back into the booking room?
- A. They told me that Scotty said everything, told them everything, and then they played me some of that tape.
- Q. All right. I want to ask you something. Did you again ask for a lawyer?
- A. No. They told me they was going to get me one.
- Q. You didn't ask because you were waiting for a lawyer?
- A. Well, it was late. I figured, you know, that I would be seeing him tomorrow.
- Q. Be seeing who, the lawyer, the next day?
- A. Yes. They said they was going to get me one, said, "Okay."
- Q. Did you know that you had the right to that lawyer before you talked?
- A. No.

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- Q. You didn't understand that?
- A. No.
- Q. So they told you that Scotty had talked to them?
- A. Yes.
- Q. And they let you hear part of the tape?
- A. Yes.
- Q. How much of that tape did you hear, how long?
- A. Around three or four minutes.
- Q. Now, after that you gave them a statement?
- A. Yes, sir.
- Q. Did you give it to them voluntarily? Did they beat you to get it?
- A. No.
- Q. Did they promise you anything?
- A. No.
- Q. Did they threaten you with anything?
- A. No.

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- Q. Did you believe that there would be anything wrong (319) in giving them that statement?
- A. No.
- Q. Did you think that anything could happen to you if you gave it to them?
- A. Like the guy told me, I probably would get off with parole or something like that, three years at the most, so that's what I figured.
- Q. That's what you thought it would be?
- A. Yes, sir.
- Q. And you didn't realize that you had a right to that attorney before you gave that statement?
- A. No. Like, they said they was going to get me one, and they're the policemen. I figured they'd know what they were doing.
- Q. Did you realize that you didn't have to talk to them?
- A. No. I didn't realize that.
- Q. But they told you you didn't, didn't they? They told you you didn't have to talk to them, didn't they?

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- A. Yes. Not in so many words, but they did, I suppose.
- Q. When they gave you the Miranda warning, did you hear what they said?
- A. Yes.
- Q. What does the Miranda warning say?
- A. I ain't for sure. You want me to tell you what I know of it?
- Q. Yes.
- A. You have the right to remain silent. You have the right to an attorney.
- Q. Did you understand what the right to remain silent meant?

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- A. No. Not actually. I didn't realize if they was talking to me I didn't have to answer no questions if I didn't want to.
- Q. You thought if they asked you a question you still had to answer them?
- A. Yes.
- Q. What about this lawyer? Did you feel that this statement meant

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- anything without a lawyer?
- A. I didn't know nothing about that. I mean, they said they was going to give me. That's all I knew.
- Q. Didn't they tell you that you had a right to have an attorney present when you were speaking or before you spoke?
- A. Yes, I believe so.
- Q. Were you waiting for that attorney?
- A. Well, they said they was going to give me one, you know. Yes, I was figuring they was going to come see me.
- Q. At the time that you gave this statement did you realize that everything you said could be used against you in Court?
- A. No.
- Q. Did you think that this was a confession that could be used in Court against you?
- A. I didn't know it would be used against me in Court, no. But I --
- Q. Hadn't they told you that at the time of the Miranda warning?

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A. Yes.

Q. Did you hear them say that, that anything you say can and will be used against you, do you remember that?

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A. Anything I can and say will - -

Q. Anything you say can and will be used against you. Do you remember them saying that to you?

A. Not to my knowledge. They may have, but not to my knowledge.

Q. You don't remember that from the Miranda warning? Stop and think. Did Mr. Woodrum tell you that you have an absolute right to remain silent? Do you remember him saying that when he was reading that card?

A. If he read the card, it must have said that.

Q. Well, no. We know it said that. But what I want to know is whether you remember him saying that or reading that off of the card?

A. He said I had the right to remain silent, yes.

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Q. And the next thing he told you was that anything you say can and will be used against you?

A. I didn't hear him -- I may have heard him, but I don't remember saying that.

Q. And then he said that you have a right to have an attorney present at all times?

A. He said I have a right to an attorney, yes.

Q. And he said, "If you do not have money to employ a lawyer, one will be appointed to represent you." Do you remember him saying that?

A. Yes.

Q. Now, before these officers questioned you the second time in there, didn't they remind you again that they had read the Miranda warning to you?

A. Yes.

Q. But they didn't read it again?

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A. No.

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- Q. You're sure they didn't read it to you again?
- A. I don't remember them.
- Q. It's possible they did read it to you again?
- A. It's possible.
- Q. But you don't remember them doing it?
- A. No.
- Q. How many times do you remember them reading that warning or saying that warning to you?
- A. Only the time when I was arrested and the time when the Louisiana officers come down.
- Q. But did they tell you several times that they remind you of it, that they had read it to you?
- A. Yes.
- Q. And they asked you if you understood it?
- A. Yes.
- Q. And all the time you told them yes?

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- A. Well, I thought I did.
- Q. Do you understand now what it means, today?
- A. Yes, pretty much so. I would probably say yes.
- Q. You didn't believe that this statement you were giving is one that would be used against you?
- A. I didn't know that, no. They didn't tell me it was.
- Q. But you figured if you did tell them something you might be convicted, though, didn't you?
- A. Well, like the guy said, you know, I would get three years at the most. I figured three years at the most.
- Q. Did this influence your giving that statement?
- A. Well, three years at the most, you know. He said, (323) "You'll probably get off on parole or something like that."
- Q. At the time you got here to Louisiana did you think you were in trouble?
- A. Not until after I talked to you that day after I come here and

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and pleaded.

Q. After you talked to me you realized you were?

A. Yes.

Q. But until then you didn't realize that you were in serious trouble?

A. Not really, no.

Q. Why didn't you realize you were in serious trouble?

A. Because the man said, you know -- I figured he knew a lot more about it than I did.

Q. Were you relying on that when you made that statement?

A. Well, yes, I guess you could say that.

Q. If that policeman hadn't talked to you or that jailer hadn't talked to you, would you have given the same statement?

A. I couldn't say that for sure.

Q. You don't know whether you would or not?

A. I couldn't say, no.

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Q. Do you feel that he influenced your giving that statement?

A. Yes. Made me feel a lot better knowing three years at the most, you know, he said if I'd say that. He said if they found me guilty that's what I'd get, three years at the most.

Q. What time did you eat on this day?

A. Around 5:30, six o'clock that evening.

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Q. Had you eaten anything during the day?

A. No.

Q. Had you eaten lunch?

A. No.

Q. Did you ask for anything to eat?

A. No.

Q. Were you hungry?

A. Yes.

Q. But you never asked anybody?

A. No.

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- Q. Why?
- A. They were busy questioning me, and I was wondering about Scotty and what all was going on.
- Q. Were you concerned about Scotty during this whole thing?
- A. Yes.
- Q. Did they play your tape back to you after they had taken the statement?
- A. Yes.
- Q. And after that, what did they do, let you out?
- A. Can you say that again?
- Q. After they finished taking this statement, what did they do?
- A. They -- I believe they took me back to the cell.
- Q. Now, what time was it when you got back to that cell, or do you know?
- A. I wouldn't know, but I would say roughly around eight o'clock.
- Q. Now, do you remember when the Louisiana officers talked to you?

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- A. Yes.

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- Q. Did you ask them for a lawyer?
- A. No.
- Q. Why didn't you?
- A. Those guys, Officer Darrow and Lieutenant whatever his name is, they told me they was going to get me a lawyer.
- Q. That was the first time you asked?
- A. Yes.
- Q. You didn't think it was necessary to ask again?
- A. No. They said okay.
- Q. The Louisiana officers, Major Diaz and Deputy Rodrigue, do you remember them?
- A. Yes.
- Q. Did they threaten you in any way?
- A. No.
- Q. Did they promise you anything?
- A. No.

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Q. Did they use any force on you --

A. No.

Q. -- or hurt you in any way?

A. No.

Q. Did they read your Miranda rights to you?

A. Yes. They did.

Q. Do you remember what they told you on the Miranda card? Did they read them off, or did they say them, or do you remember?

A. I don't remember.

Q. But they did give you your Miranda rights, you distinctly remember that?

A. Yes.

Q. Do you remember what the Miranda rights were?

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A. They said just about the same thing that California said.

Q. Did you understand what it meant?

A. I thought I did. If I would have

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known today then, you know, it would have been different.

Q. You think you understand them now?

A. I couldn't say for positive, but I think I do.

Q. You gave the Louisiana lawyers -- I mean, the Louisiana officers -- a statement too, is that correct?

A. Yes.

Q. The same statement approximately that you had given the other officers?

A. Yes.

Q. Now, I will ask you this. Did you give that to them voluntarily?

A. What do you mean, voluntarily?

Q. Well, did you want to give it to them? Did you feel that you had to give it to them?

A. Yes.

Q. Why?

A. Because they asked me, and I didn't know better. If they said -- they didn't say I didn't have to, you know.

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- Q. Well, on the Miranda warning they told you you had the right to remain silent?
- A. Yes. But I didn't understand that. I mean --
- Q. Didn't you understand that the right to remain silent meant the same thing as not giving a statement?
- A. No. Well, I don't believe. I don't believe I would have.

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- Q. What did you understand by the right to remain silent?
- A. Well, I didn't really thing about it, you know.
- Q. You didn't really know what the devil it did mean, did you?
- A. To tell you the truth, no.
- Q. Did anybody explain to you what the Miranda warning meant, did they explain to you what the right to remain silent meant, that it meant you didn't have to give a statement, that you didn't have to say anything, anybody ever tell you you don't have to give a statement?

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- A. No. They never told me I didn't have to --
- Q. Did anybody tell you you didn't have to answer questions?
- A. No.
- Q. Did anybody explain to you that the terms "what you say can and will be used against you" meant that this would be evidence against you in Court to convict you?
- A. They didn't tell me that they was even going to use the Court, what we said or nothing. The only thing they explained to me was the lawyer.
- Q. How did they explain the lawyer?
- A. They said that I did have the right to a lawyer.
- Q. You understand that?
- A. Yes.
- Q. That you didn't have to pay for that lawyer?
- A. Yes. They said that one would be appointed for me.
- Q. Did you understand that you had the right to have that lawyer before you

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answered any questions? Did
(328) they explain that to you?

A. Not in that term right there, no.

Q. When these people asked you questions, you felt you had to answer them?

A. Yes, sir.

MR. O'NIELL:

Tender the witness.

CROSS EXAMINATION

BY MR. NAQUIN:

Q. Donnie, when will you be sixteen?

A. I was sixteen August 2nd of this month.

Q. So you're sixteen right now, correct?

A. Yes, sir.

Q. Before you took this witness stand certain rights were explained to you, like the right against self-incrimination where you don't have to testify if you don't want to. Did you understand those rights?

A. I believe pretty much so, yes.

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Q. Did you know what the term "self-incrimination" meant?

A. In other words, it would hurt me or something like that? Were to hurt me in the process or something? Is that explaining it?

Q. That's testifying against yourself. You don't have to do that. You don't have to testify if you don't want to.

A. Yes.

Q. You understood that?

A. I understand it, yes.

Q. Donnie, how far did you go in school?

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A. You mean the grade I'm in now?

Q. Correct.

A. The ninth grade.

Q. Ninth grade. You've never failed any grade, have you?

A. I would not say failed. I've been put back because I didn't go to kindergarten.

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- Q. Well, you started a year late, right?
- A. You could say that, yes.
- Q. Okay. But from kindergarten through the ninth grade you've never failed any grades, have you?
- A. No, sir.
- Q. Can you read, Donnie?
- A. Since I've come to jail, yes. I've taught myself how to read.
- Q. You've taught yourself how to read?
- A. Yes, from what little I knew, you know.
- Q. Can you read a newspaper?
- A. I can't read the big words in it, but I can read the little ones.
- Q. Can you write?
- A. You mean cursive or printing?
- Q. Cursive.
- A. I can use, like, some letters and I can't use others. Say, I could write an "A" but not a "B". I don't know how to write a "B" or

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- something like that.
- Q. So when you want to write something you're required to print it?
- A. Oh, yes. I've always printed.
- Q. Donnie, were you in special education classes or were you in regular classes?
- (330)
- A. I was in special education classes most of the time.
- Q. Where did you attend school, do you remember?
- A. You mean from -- from when? When I started school or --
- Q. Well, did you attend many schools?
- A. Yes, sir. A lot of them.
- Q. Did you ever attend school in California?
- A. Yes, sir.
- Q. What's the last school you attended?
- A. The absolute last school?
- Q. That's correct.

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- A. Well, you mean that I went to or that I went enrolled and never went back?
- Q. Well, the last one that you went to, that you attended. Not the one that you enrolled and didn't go back.
- A. I would say it was in Ashfork, Arizona.
- Q. What was that word?
- A. Askfork, Arizona.
- Q. Do you know how to spell that?
- A. A-s-k- I guess you would spell it just like a regular fork.
- Q. I think you testified that you admitted the taking of the car without permission, is that correct?
- A. Yes. We told them we took it without nobody knowing about it.
- Q. Okay. And this was in Benson, Arizona?
- A. Yes, sir.
- Q. Now, your mother picked you up in Benson on a Sunday, is that correct?

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- A. I couldn't say for sure. I don't know the day.
- Q. Well, if she picked you up on a Sunday and you were at the trailer until Friday when you were arrested, right? That was on a Friday?
- A. Well, it took the time from getting back from Benson to California. I would say we got to California probably -- if it was Sunday, we would have probably got there around Monday some time.
- Q. All right. Did you tell your mother that you had taken the car without permission?
- A. Without his knowledge, yes.
- Q. Without his knowledge. You were arrested at the trailer at approximately 2:30 in the afternoon?
- A. Yes, sir.
- Q. Now, you said you don't recall but that -- how many times did they read you your rights at this time?
- A. At the time they arrested us?
- Q. That's right.
- A. To tell you the truth, I don't

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remember if they read them when they handcuffed us. I don't remember if they did that time. But I know they read them when we was in the car.

Q. Did they tell you why you were under arrest?

A. They said for grand theft auto. That's the term they used.

Q. Was it Detective Woodrum who told you your rights?

A. In the car, yes.

Q. It was?

A. But when they handcuffed us, I don't even remember if they read them.

Q. Okay. But you do know it was Detective Woodrum in the car who gave you your rights?

A. Well, whoever was driving.

Q. And then you were brought to the station, and you and Donnie were kept together for approximately fifteen minutes?

A. You mean Scotty?

Q. I mean Scotty. I'm sorry.

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A. Approximately fifteen minutes, yes.

Q. I think you testified that you complained that your cuffs were a little tight and Sergeant Sodaro loosened them?

A. I didn't complain. I asked him if he would loosen them, that they was cutting off my circulation.

Q. And he did loosen them?

A. Yes, sir. He did. Well, the one that wasn't handcuffed to the chair.

Q. So you had -- when he loosened them, they were loose enough to where they weren't bothering you anymore?

A. Yes. I could move a little better.

Q. Then Sergeant Sodaro and Officer Woodrum spoke to you individually, is that right?

A. Yes. They split us up.

Q. Now, before they talked to you, they reminded you of your rights?

A. Yes. They said, "Do you remember the rights we read you?"

Q. And what did you answer?

A. I said, "Yes."

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Q. Now, isn't it a fact that the first time they read (333) you those rights in the car didn't they ask you if you understood those rights?

A. Yes, sir. They did.

Q. And what did you say?

A. I said, "Yes."

Q. Okay. So they again reminded you of those rights or that they had given you rights --

A. Yes.

Q. -- asked if you recalled them?

A. They said, "Do you remember the rights we read to you?" or something like that. I don't know the words.

Q. And you said, "Yes. I do"?

A. Yes.

Q. Okay. Did they ask you then if you wanted to answer their questions?

A. No. They just started asking questions.

Q. And they questioned you about the car?

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A. Yes, sir.

Q. Now, before they questioned you about the gun, isn't it a fact that they again reminded you or asked you if you remembered the rights which they had given you?

A. Would you say that again?

Q. All right. Number one, they read you your rights in the car, that's correct?

A. Yes.

Q. They reminded you of those rights before they questioned you about the car?

A. Yes. I believe.

Q. Now, before they questioned you about the gun, (334) didn't they remind you of those rights again?

A. I couldn't say. I don't remember. They may have and they may not have. I don't know.

Q. How did they question you about the gun?

A. They asked us if we had one and if we ever had one, stuff like that.

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- Q. Okay. And --
- A. They asked us if we ever shot a gun or something like that or went hunting.
- Q. And you answered their questions?
- A. Yes.
- Q. When they asked you about the gun, Donnie, didn't you become very upset?
- A. Oh, I wouldn't say at that time, no.
- Q. Did they tell you at that time that Jessie had been shot?
- A. Yes.
- Q. Did you become upset then?
- A. Yes.
- Q. Did you become very excited and very nervous?
- A. What you mean "excited"?
- Q. I think you know. Were you shaking?
- A. Well, yes. I got real bad nerves.
- Q. Was your voice breaking or quivering?

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- A. I don't remember. It may have. It may not have.
- Q. Isn't it a fact that that's why they stopped questioning you at this time?
- A. No. It ain't. I asked for an attorney, and they said, "Okay." You know, they said, "We're going to get you one." Not those words. They said, "Okay," or "All right," I believe it was. And (335) then they asked me a couple more questions.
- Q. In what manner did you ask for an attorney?
- A. I said, "If you're going to be asking me those kind of questions," I said, "I would like to see an attorney. I want a lawyer."
- Q. Well, did you -- you knew you had a right to a lawyer, huh?
- A. Yes. They told me that if I wanted one that they would give it to me.
- Q. So then you must have understood the rights that they had given you, if you knew that?
- A. No. They said, "Anytime you would like a lawyer, request it." I remember Sergeant Sodaro saying

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that. I believe it was Sergeant Sodaro saying that.

Q. So you went back to the cell then for about two hours?

A. I would say around two hours, yes.

Q. This is supposedly when this conversation took place with the jailer, right?

A. Yes. When he -- I believe he brought in the food. I don't know if it was at that time or the time when he was cleaning out the other cell. I ain't for sure.

Q. Who was the jailer, Donnie?

A. I don't know his name. I don't remember.

Q. He didn't have a name tag?

A. I don't believe. I didn't see one.

Q. Was he uniformed?

A. Not in no blue policeman suit, no.

Q. The individual that you spoke to did not have a police uniform on?

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A. No, sir. He did not.

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MR. NAQUIN:

May I have one second, please, Your Honor?

(PAUSE)

BY MR. NAQUIN:

Q. Describe, Donnie, if you can, the individual that you spoke to at this time?

A. Oh, let's see. He'd probably come up to about right here on me.

Q. How tall are you?

A. I'm six-one and a half, I believe.

Q. Okay.

A. Probably around five-eight, five-nine, probably. I ain't for sure. He come up to my chin, I would say. He had sort of sandy colored hair, about like yours, maybe a little bit lighter. A little bit chunkier than -- than an average man, I would say. He had a little bit -- had a little more meat on his bones.

Q. How old was he?

A. I don't know. My guess probably would be around thirty, 35, inbetween there.

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Q. Why was this individual at your cell, Donnie?

A. I don't remember if it was when he was cleaning out the cell behind me or if it was the time that he brought me my food.

Q. Now, I think you testified that you sent word to Sergeant Sodaro that you wanted to talk to him?

A. Yes. I guess you could say that, yes.

Q. Okay. The reason that you wanted to talk to him is you wanted to find out what Scotty had said, is that right?

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A. Yes. That, and I wanted to see Scotty.

Q. So that when you met eventually with Sergeant Sodaro you asked him what Scotty said, didn't you?

A. No. He --

Q. That's why you wanted --

A. I suppose. Yes. I asked him, yes. Then he played that tape to me.

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Q. And did they tell you, "Well, Scotty said everything"?

A. Yes.

Q. So didn't you ask if you could hear the tape?

A. No. He played it to me before -- I didn't never ask him if I could hear the tape. He played it to me. He said, "So that you would believe us and know that we're not lying," he played it to me.

Q. Donnie, there's no question but that these police officers didn't use any force or threats or promise you anything, right?

A. No, they didn't beat me up or nothing like that.

Q. Isn't it a fact that they talked to you in a very comfortable manner, they never shouted at you or anything like that, did they?

A. No. You might ought to say we become good friends in a way.

Q. Now, the second time you went back into the room and you spoke to Sergeant Sodaro, when they played you part of that tape, at that time didn't they again remind you or ask

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you if you remembered the rights that they had given you earlier?

A. I believe they may have, yes. I ain't for sure about that.

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Q. Now, I think you said they fed you about 5:30 or six o'clock?

A. I believe so.

Q. You gave your statement after you ate supper, isn't that right?

A. Yes. I believe so.

Q. Isn't it a fact that you gave your statement about 7:40 that night?

A. Around eight o'clock, something like that, I would say.

Q. And that was after they had fed you, correct? Because they fed you, you said, between 5:30 and six.

A. Yes. I ain't for sure if it was 5:30 or six. I didn't have no watch or nothing, but I figure that's probably about what time it was.

Q. It was before you gave your statement?

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A. Yes, sir. It was.

Q. After you gave your statement -- when you gave your statement, you knew it was being tape recorded, didn't you?

A. Yes, sir. I did.

Q. They told you that they had a tape recorder in front of you?

A. I saw the tape recorder. I don't know if it was him or the Louisiana officer that said, "You can see the tape recorder in front of you."

Q. Sergeant Sodaro and Detective Woodrum didn't show you that tape recorder right in front of you and say "Donnie, we're going to tape what you've got to say"?

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A. No. I just said. They showed it to me and they -- and I don't remember if it was the two Louisiana officers that come down or Sergeant Sodaro and -- it was one of those two that said, "You see it in front of you, don't you?" But I knew it was there, yes.

Q. Oh. Well, the time that you gave the statement to Sergeant Sodaro and Detective Woodrum you knew the

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tape recorder was there?

A. Uh-huh. (Indicating affirmatively)

Q. You knew what you were saying was being recorded?

A. Yes.

Q. After you finished giving this tape, Donnie, where did you go?

A. Back to the cell.

Q. Did you stay there until the Louisiana detectives came?

A. No. I talked to my mom before they come.

Q. How long did you talk to your mother?

A. I couldn't say, really.

Q. You talked to your sister, also?

A. Yes. She -- there was like a long little room, and they had a screen inbetween. Like, it wasn't a screen. It was like little -- well, you could call it a screen, I suppose.

Q. So you did speak to your mother?

A. Yes, sir.

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Q. And your sister?

A. Yes, sir.

Q. After you spoke to them, you were returned to your cell?

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A. I believe for a short time, yes. I ain't for sure.

Q. After which you were brought to meet the Louisiana officers?

A. Uh-huh. (Indicating affirmatively)

Q. The Louisiana officers advised you of your rights?

A. Yes, sir.

Q. By reading from a card?

A. I don't remember if he read it from a card or he said it off the top of his head.

Q. Did you recognize that the rights that they read you were the same rights that the California officers had read to you?

A. I think they were just about the same ones.

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Q. Did they ask you if you understood these rights?

A. Yes.

Q. And what did you reply?

A. I said, "Yes."

Q. When the Louisiana officers questioned you, they also tape recorded your statement, is that correct?

A. Yes, sir.

Q. They told that they were going to tape record it, is that right?

A. I knew it was there. Like I said, I don't know if it was the Louisiana officers or the Sergeant and Detective, but one of the two couples said, "You see the tape recorder in front of you."

Q. And again, there's no question but that Major Diaz or Detective Rodrigue, they did not promise you anything or make any threats to you or force you to give a statement, did they?

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A. No. They was quite nice to me.

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(341)

Q. You never asked them for a lawyer, did you?

A. No. I figured the Sergeant and Detective was going to give me one.

Q. You never told them that you had asked for a lawyer previously, did you?

A. They didn't ask me.

Q. Okay. And you never told them that either, did you?

A. No.

Q. You never told them that Detective Woodrum and Sergeant Sodaro had said that they were going to get you a lawyer, did you?

A. Rephrase that and say it again, will you?

Q. You never told Major Diaz and Detective Rodrigue that Sergeant Sodaro and Detective Woodrum were going to get you a lawyer, did you?

A. No. I don't believe. I believe -- my mom told me that she was going to go down and see about getting a lawyer. I believe I might have told them about that.

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Q. Didn't your mother talk to you about getting a lawyer for purposes of extradition?

A. She said she was going to get me a lawyer.

Q. That's when you spoke to her that night after you gave the statement, right?

A. After the first statement, yes.

Q. That's correct. And didn't she tell you that she was going to get you a lawyer for extradition?

A. She didn't say no extradition. She said she was going to go down and get me a lawyer, she was (342) going to talk to a lawyer tomorrow about handling this.

Q. Okay. You didn't tell your mother that Sodaro and Woodrum said they're going to get me a lawyer, "So, Mom, you don't go get one," did you?

A. No. I didn't say that.

Q. As a matter of fact, you never even mentioned to your mother that you had asked for a lawyer?

A. No. I don't believe I had.

Q. Do you know how long you talked to

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to the Louisiana officers?

A. No. I don't.

Q. Was it about a half an hour?

A. You can say that. You could say an hour.

Q. After which they brought you back to the cell?

A. I believe that's when they booked me, and then they took me back to the cell. No. I believe they booked me, and then I got to talk to my mom in I believe it was that detective's office or -- it was one of the two's offices of the Sergeant or the Detective. I got to talk to her in there.

Q. Do you recall, Donnie, what time you got back to the cell?

A. I would say around three o'clock, but I didn't have no watch, and they took Scotty's away from him.

Q. Were you and Scotty together?

A. That was called one-man cells. I believe that's what they call them. But I was in this one and Scotty was in this one.

Q. You and Scotty could talk?

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- A. Oh, yes.
- Q. You all talked about having to go back to Louisiana?
- A. Yes. They told us it would be better, you know, and then being down in juvenile hall with all those weirdos, we figured it would be better.
- Q. And the next day, that's when you appeared in front of a judge, right?
- A. I believe so, yes.
- Q. You signed a paper stating you wanted to come back to Louisiana?
- A. Yes.
- Q. Your mother was with you?
- A. Yes, sir.
- Q. Before you signed that paper, the judge explained certain rights to you, didn't he?
- A. Yes, sir. He did.
- Q. Did he ask you if you understood those rights?
- A. I believe he did.
- Q. And what did you tell him?

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- A. I told him I did.
- Q. Donnie --
- A. Yes, sir.
- Q. --what's the last job you held?
- A. You mean there in California or down here?
- Q. No, in Louisiana.
- A. Huh?
- Q. In Louisiana.
- A. I was a trash collector.
- Q. When you applied for that job, did you fill out an application form?
- A. I believe so, yes, sir.
- (344)
- Q. Did that application form contain a series of questions?
- A. Yes, sir.
- Q. Did you personally answer those questions?
- A. No, sir.

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Q. Who answered it?

A. I wrote it in my writing, but Scotty told me how to spell the words and stuff.

Q. Donnie, explain to me once again what you had previously said about your writing ability, something about the "A's" and the "B's".

A. Oh, like, I don't know how to write all the letters in cursive.

Q. Is it just trouble with "A's" and "B's", or is it trouble with all of the alphabet?

A. I mean, say, if -- I couldn't read -- say, if you was to give me, say, a letter from my sister or my mom in printing and then in handwriting, I may be able to read the printing but not the handwriting, because I couldn't understand what the letters was.

Q. In cursive?

A. Yes. Not all of them, but some of them I could.

Q. Is your problem also that when you write in cursive you write your "B's" backward?

A. I don't believe so.

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Q. Donnie --

A. Yes, sir.

Q. -- yesterday you listened to a tape, is that correct?

A. Yes, sir. I did.

(345)

Q. Does that tape accurately reflect what you told the California authorities, isn't that what you told them?

MR. O'NIELL:

I object, Your Honor. We're going into the contents of the tape, and we are restricting this to the giving of it, not what was in it or the veracity or correctness or anything else. This was my position in the beginning. Counsel agreed to it. That we're not going into whether or not the tape was correct or truthful. We're only going into whether or not the tape was given. I think we're going beyond that point.

MR NAQUIN:

The tape was admitted in

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evidence solely for this hearing, for the purpose of determining the free and voluntary nature of it. I think Your Honor has that evidence and can listen to that tape. My question to Mr. Collum was: "Does that accurately reflect what took place during the conversation?" To show that it was in fact free and voluntary.

MR. O'NIELL:

I think the tape is the best evidence of what it contains.

MR. NAQUIN:

Well, I want to make certain that he heard it and he says that's what happened.

MR. O'NIELL:

Well, Your Honor --

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MR. NAQUIN:

I'm not asking him about is it --

THE COURT:

I think you could ask the

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manner in which it was given, but I don't think you can ask the accuracy of what was contained in it.

MR. NAQUIN:

Well, that was my purpose in asking the question, Your Honor. Maybe I phrased it a little offbase.

THE COURT:

I don't think you -- you cannot go into the substance of what was given, as I understand the Lovett case.

MR. NAQUIN:

That's correct, Your Honor, and it was not my purpose to go into the substance of it. Only for the purpose of showing the free and voluntary --

THE COURT:

You can go into the manner. Right. You can go into it with reference to the free and voluntary way in which it was given or not, but you cannot go into the accuracy of it. Now, your question was: "Was it accurate?" I don't think

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you can ask that, so I'm going to sustain Mr. O'Niell's objection on that point.

MR. NAQUIN:

I will rephrase the question.

THE COURT:

But my ruling should not be construed to limit you on questioning the manner in which it was given. But you are prohibited from asking about the substance of what was given, as I understand the ruling of the Louisiana Supreme Court.

MR. NAQUIN:

Yes, Your Honor.

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BY MR. NAQUIN:

Q. Donnie, you heard the tape, correct?

A. Yes, sir. I did.

Q. You heard Detective Woodrum and Sergeant Sodaro asking you certain questions?

A. Yes, sir.

Q. Is that the manner in which they had

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asked you the questions at the time you gave that statement?

A. Come back on that.

Q. Is that the way that they asked you the questions?

A. When? You mean during the tape, or before the tape, after the tape?

Q. During the tape. Isn't that the same way -- you heard it. That is the same way that they asked you the questions when you gave them the tape, right?

A. Depending on the question. I mean -- I mean, rephrase that where I --

Q. Okay.

MR. O'NIELL:

The witness is confused, Your Honor. I would like to ask him to put it in the simplest possible terms.

BY MR. NAQUIN:

Q. Donnie, you didn't hear any shouting on the tape, did you?

A. No, sir.

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Q. You didn't hear any loud or forceful manner of questioning you, did you?

A. No.

Q. Well, what you heard was simple, precise questions, right?

A. Simple, yes.

Q. And your answers?

A. Yes, sir.

Q. That is the way you gave it to the detectives in California, isn't it?

A. Come back on that.

MR. O'NIELL:

If Your Honor please, I think that this witness is obviously -- the witness obviously is confused. The tape displays the manner in which the questions were asked and the answers were given. Now, to ask this witness if this is the way they were asked and how they were given would confuse anyone, Your Honor. And if counsel -- I don't believe that counsel is trying to ask if the tape is a truthful statement or anything of the sort, but I

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think that this is what he's got this witness believing. Now, I think the tapes are the best evidence of themselves, that they certainly reflect the tone of voice, the volume of the voice. He didn't ask him (349) if they hollered at him or raised their voice at him or anything else. So I think, Your Honor, that these questions are absolutely irrelevant and doing nothing but confusing the witness, and I ask that this line of questioning be ceased.

THE COURT:

Mr. Naquin?

MR. NAQUIN:

If Your Honor please, again, the tapes are in evidence. They've been admitted for the purpose of showing the free and voluntary nature of the statement. This particular individual is the individual who gave the statement. Now, what I wish to get from him is his testimony that those tapes that he heard accurately reflect what transpired at the time he gave the statement, and that all goes to the free and

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voluntary nature of the statement.

THE COURT:

I think he can ask that question.

MR. O'NIELL:

Well, if he were to ask if that's what transpired and the manner in which it transpired --

MR. NAQUIN:

You objected when I asked the question in the first place.

MR. O'NIELL:

You didn't ask it that way.

THE COURT:

Rephrase your question, counsel.

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MR. NAQUIN:

Yes, sir.

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BY MR. NAQUIN:

Q. Specifically, those tapes that you heard -- that tape, excuse me -- yesterday, does that tape accurately --

THE COURT:

Now, which tape? That's a good point now. You've got two tapes.

A. The one from California or --

BY MR. NAQUIN:

Q. The one from California, excuse me. Okay. Does that tape accurately reflect what took place when you gave your statement to Sergeant Sodaro and Detective Woodrum?

A. You mean the tone of voice and the way they was questioning me?

Q. That's right.

A. All right. I got that. Yes, I would say so.

Q. Okay. No question about that, correct?

A. No, they wasn't yelling at me or nothing.

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Q. The same thing is true with the second tape, the Louisiana tape by Diaz and Lirette, correct?

A. Correct.

MR. O'NIELL:

Rodrigue.

BY MR. NAQUIN:

Q. Rodrigue, excuse me. Donnie, you said something on direct examination. If you knew then what you know now you wouldn't have made the statement. That's about the sum total, right?

A. I mean, I would have made sure I would have had the lawyer there. I mean, when I asked for that lawyer, I would have made sure I would have got it. I mean, I wouldn't have just took their word for it.

MR. NAQUIN:

I have no further questions.

THE COURT:

Redirect?

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REDIRECT EXAMINATION

BY MR. O'NIELL:

Q. Donnie, this jailer who told you that you would only get three years, how was he dressed?

A. In a little -- it was a light -- I don't know if it was a suit. I wouldn't call it a suit, but his pants and shirt matched, and it was sort of a light -- I guess you'd call it baby green.

Q. Was it a uniform?

A. It didn't look like one, but the shirt and pants matched. I wouldn't call it no uniform.

Q. What made you believe that he was a jailer?

A. I mean, he brought me my food and stuff.

Q. He had the key to the jail?

A. They didn't have the keys. They just pushed buttons.

MR. NAQUIN:

I'm going to object, Your Honor. He's leading the witness.

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THE COURT:

Sustained.

MR. O'NIELL:

You know, after all of this
leading it's rather amusing.